

FILED
GREAT FALLS

2010 MAR 16 PM 2 18

IN THE UNITED STATES DISTRICT COURT

PATRICK E. DUFFY, CLERK

FOR THE DISTRICT OF MONTANA

BY _____

DEPUTY CLERK

GREAT FALLS DIVISION

WENDY J. JEROME,

Plaintiff,

vs.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

CV-09-20-GF-SEH

MEMORANDUM AND
ORDER

Pending before the Court is Plaintiff's Application for Award of EAJA Fees and Costs. The request arises directly from this Court's adoption of Magistrate Judge Strong's Findings and Recommendation granting in part and denying in part Plaintiff's Motion for Summary Judgment and remanding the case to the Administrative Law Judge (ALJ). The motion is opposed.

The United States prevailed in proceedings before the Commissioner. When additional medical records, not available to the ALJ prior to his decision were produced, remand was ordered to ensure full consideration of Plaintiff's claim.

Plaintiff has not prevailed on the merits of her claim. In the end she may or may not be entitled to benefits.

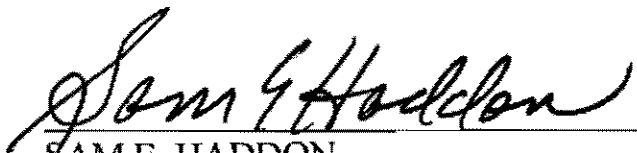
The Court declines to conclude the defendant's position in defending the claim to have been unreasonable in law or in fact. It has been to this point substantially justified. *See* 28 U.S.C. § 2412(d)(1)(A).

In the absence of any final judgment on the merits, and as the record now stands, an award of attorney's fees would be premature. *See* 28 U.S.C. § 2412(d)(1)(B).

ORDERED

Plaintiff's Application for Award of EAJA Fees and Costs¹ is DENIED without prejudice to renewal if plaintiff prevails on the merits of her claim.

DATED this 16th day of March, 2010.


SAM E. HADDON
United States District Judge

¹Doc. No. 25.